

Message Text

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FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 2058

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E.O. 11652: N/A

TAGS: OVIP (ARENDT, WALTER), ELAB, SWEL, GW

SUBJECT: PROPOSED US-FRG SOCIAL SECURITY AGREEMENT

AND VISIT OF FRG LABOR MINISTER

REF: (A) STATE 183607, (B) BONN 12460

1. SUMMARY: BECAUSE RESOLUTION OF THE ISSUE POSED BY THE DEPARTMENT'S REQUEST THAT THE DEFINITION OF "NATIONAL" BE DROPPED FROM THE PROPOSED SOCIAL SECURITY AGREEMENT WILL BE TIME-CONSUMING, MINISTER OF LABOR ARENDT HAS CANCELLED HIS PLANS FOR VISITING WASHINGTON ON SEPTEMBER 3. WE HAVE BEEN UNABLE TO PERSUADE THE GERMANS TO OMIT A DEFINITION ALTOGETHER, AND THE FOREIGN MINISTRY IS UNWILLING TO AGREE THAT "NATIONALITY" BE DEFINED IN TERMS OF REFERENCE TO THE FRG-US FCN TREATY, RATHER THAN THE FRG BASIC LAW, WITHOUT DETAILED STUDY AND HIGH-LEVEL REVIEW WITH OTHER MINISTRIES. WHILE THIS FRG REVIEW IS GOING ON, THE EMBASSY REQUESTS THAT THE DEPARTMENT ALSO ONCE MORE WEIGH THE IMPLICATIONS OF THE ACTION IT HAS REQUESTED

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AT THIS LATE STAGE OF THE NEGOTIATIONS. END SUMMARY.

2. THE EMBASSY DISCUSSED AGAIN THE DEPARTMENT'S PROPOSAL TO DELETE THE DEFINITION OF "NATIONAL" IN THE PROPOSED US-FRG SOCIAL SECURITY AGREEMENT WITH THE MFA AND THE MINISTRY OF LABOR.

3. MFA AND LABOR MINISTRY REPRESENTATIVES INDICATED AGAIN THAT THE FRG CONSIDERS THE INCLUSION OF A DEFINITION OF NATIONALITY AS ABSOLUTELY NECESSARY. THEY ALSO SAID THAT MINISTER OF LABOR WALTER ARENDT HAS CANCELLED HIS PLANNED SEPTEMBER 3 VISIT TO WASHINGTON (SEE BONN 07890 MAY 15, 1975, BONN 11794 JULY 18, 1975) UNTIL THIS ISSUE IS RESOLVED.

4. THE MFA AND LABOR MINISTRY'S RATIONALE FOR SUCH A REQUIREMENT IS TECHNICAL AND POLITICAL. UNDER GERMAN LAW THE BENEFICIARIES OR THOSE ELIGIBLE FOR BENEFITS UNDER THE PROPOSED AGREEMENT MUST BE DEFINED PRECISELY AND THIS PROBLEM CAN BE SOLVED ONLY BY INCLUDING A DEFINITION OF NATIONALITY. THE FRG EMBASSY IN WASHINGTON REPORTED THE DEPARTMENT'S DESIRE TO DELETE THE DEFINITION OF "NATIONAL" AND THE ADDITIONAL INFORMAL SUGGESTION TO SUBSTITUTE THE WORDS "VERSICHERTE" (INSURED) OR "BERECHTIGTE" (PERSONS ENTITLED TO) FOR THE WORD "NATIONAL" THROUGHOUT THE AGREEMENT. THE LABOR MINISTRY REACTED TO THIS REPORT BY COMMENTING THAT THIS SUBSTITUTION OF TERMS WOULD CREATE TECHNICAL PROBLEMS UNDER GERMAN LAW. FOR EXAMPLE, AN AUSTRALIAN WORKING IN BRAZIL WHO HAD WORKED IN THE FRG AND IN THE US WOULD BE ELIGIBLE FOR BENEFITS UNDER THIS AGREEMENT. IN PRACTICE, THIS SOLUTION PROPOSED BY THE DEPARTMENT COULD OPEN GERMAN SOCIAL INSURANCE BENEFITS TO THE WHOLE WORLD, THEY SAID. THIS OPEN-ENDED SITUATION ON WHO IS ELIGIBLE FOR BENEFITS WOULD BE UNSATISFACTORY AS FAR AS THE FRG IS CONCERNED. THEY ALSO INDICATED THAT REMOVAL OF THE DEFINITION OF NATIONAL WOULD ELIMINATE VOLUNTARY BENEFITS FOR US NATIONALS UNDER GERMAN LAW GRANTED IN ARTICLE 7 (B) AND (C) OF THE PROTOCOL OF THE PROPOSED AGREEMENTS. (THIS ELIMINATION WOULD AFFECT PARTICULARLY THE INTERESTS OF US LIMITED OFFICIAL USE

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NATIONALS WHO WERE REFUGEES FROM THE NAZI REGIME IN GERMANY.)

5. ON THE POLITICAL SIDE, MFA AND LABOR MINISTRY REPRESENTATIVES INDICATED AGAIN DISAPPOINTMENT ON THE LATE TIMING OF DEPARTMENT'S PROPOSED ELIMINATION OF THE DEFINITION OF NATIONAL COMING AT THE STAGE OF FINAL CLEARANCE AFTER OVER TWO YEARS OF NEGOTIATION. MFA

REPRESENTATIVES WERE UNIMPRESSED WITH THE DEPARTMENT
RATIONALE THAT THE DEFINITION OF "NATIONAL" WOULD
UNDERMINE EFFORTS IN USG NEGOTIATIONS WITH THE GDR ON
A CONSULAR CONVENTION. CANADA AND MANY OTHER NATO
ALLIES WHO HAVE SIMILAR SOCIAL SECURITY AGREEMENTS
WITH THE FRG HAVE NOT RAISED THE ISSUE OF ELIMINATION
OF THE DEFINITION OF NATIONAL. THEY ALSO INDICATED

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TO SECSTATE WASHDC IMMEDIATE 2059

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DISAPPOINTMENT THAT THE USG APPEARS TO BE RELUCTANT,
AT THIS STAGE, TO SUPPORT THE APPLICABLE PARTS OF THE
BASIC LAW WHICH ACTS AS THE FRG CONSTITUTION AND WAS
DEVELOPED IN CLOSE COLLABORATION WITH THE USG.

6. ALTHOUGH THE LABOR MINISTRY INFORMED THE MFA THAT
ITS TECHNICAL REQUIREMENTS FOR A DEFINITION OF
NATIONALITY COULD BE SATISFIED WITH A REFERENCE TO
ARTICLE XXV PARA 6 AND PARA 22 OF PROTOCOL OF US-FRG
TREATY OF FRIENDSHIP, COMMERCE AND NAVIGATION (AS
INDICATED IN REFTELS), MFA REPRESENTATIVES REAFFIRMED
THAT THIS PROPOSAL ALSO WOULD REQUIRE A DETAILED

REVIEW BY THE MINISTRY OF INTERIOR, MINISTRY OF JUSTICE AND BY HIGH LEVELS OF THE MFA BECAUSE OF THE POLITICAL AND CONSTITUTIONAL IMPLICATIONS OF THIS USG PROPOSAL. MFA REPRESENTATIVES CLAIMED THAT THE SUGGESTED USE OF THE 1954 FCN TREATY REFERENCES WOULD REQUIRE ALSO A REVIEW OF THE IMPACT OF THE 1971 QUADRIPARTITE AGREEMENT ON THESE PROVISIONS OF THE FCN TREATY. THESE REVIEWS, MFA REPRESENTATIVES SAID, WOULD REQUIRE CONSIDERABLE TIME. AT FIRST MFA REPRESENTATIVES LIMITED OFFICIAL USE

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SENTATIVES SUGGESTED THAT THE USG FORMALIZE THE PROPOSAL TO USE THE ABOVE FCN TREATY REFERENCES AS A DEFINITION OF NATIONALITY IN A DIPLOMATIC NOTE. HOWEVER, LATER THEY APPEARED WILLING TO EXAMINE THIS ISSUE WITHOUT A FORMAL NOTE BUT INDICATED A LONG DELAY WOULD BE REQUIRED BEFORE AN ANSWER COULD BE SUPPLIED.

7. THE LABOR ATTACHE HAS DISCUSSED YOFFE/SSA COMMENTS ON THE SCHWARZ LETTER DATED JUNE 30 WITH THE LABOR MINISTRY REPRESENTATIVES (SEE PARA 4 REF (A)). THE LABOR MINISTRY AGREES OR HAS CLARIFIED THESE POINTS. THUS THE TECHNICAL ASPECTS OF THE PROPOSED AGREEMENT APPEAR TO BE RESOLVED LEAVING ONLY THE POLITICAL ISSUE OF THE INCLUSION OF THE DEFINITION OF NATIONALITY TO BE RESOLVED.

8. COMMENT: THE PROPOSED DELETION OF THE DEFINITION OF "NATIONAL" FROM THIS PROPOSED SOCIAL SECURITY AGREEMENT APPEARS TO HAVE TOUCHED A PARTICULARLY SENSITIVE POLITICAL NERVE WITHIN THE FRG GOVERNMENT AND, IF PRESSED, MAY BE THE SOURCE OF AN INTERNAL CONTROVERSY WITH BROADER POLITICAL RAMIFICATIONS THAN THE SOCIAL SECURITY AGREEMENT AND PROLONGED DELAYS IN THE SIGNING OF THIS AGREEMENT. THE CANCELLATION OF ARENDT'S VISIT MAY ALSO BE AN INDICATION OF THE POLITICAL IMPORTANCE THE FRG ATTACHES TO THIS ISSUE. UNFORTUNATELY, THESE INDICATED DELAYS WILL ALSO AFFECT US COMMERCIAL INTERESTS, WHICH PROMPTED THE ORIGINAL REQUEST FOR USG ACTION ON SUCH A SOCIAL SECURITY AGREEMENT FROM THE AMERICAN CHAMBER OF COMMERCE IN GERMANY. ALSO AN ESTIMATED 60,000 PERSONS IN THE FRG AND EQUAL OR LARGER NUMBER OF PERSONS IN THE US INCLUDING THOSE FORMER GERMAN CITIZENS WHO ARE NOW US NATIONALS WHO LEFT GERMANY BETWEEN 30 JANUARY 1933 AND 8 MAY 1945 FOR POLITICAL, RACIAL OR RELIGIOUS REASONS, WHO WILL BE ELIGIBLE FOR BENEFITS UNDER THE AGREEMENT WILL BE AFFECTED.

IN OUR DISCUSSIONS WITH THE LABOR MINISTRY AND THE
MFA, WE HAVE URGED THAT THE POLITICAL DIFFICULTIES BE
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AVOIDED BY LEAVING UNRESOLVED THE DEFINITION QUESTION,

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WHICH FROM OUR STANDPOINT IS EXTRANEIOUS TO THE NEEDS
OF THIS PARTICULAR AGREEMENT. AS NOTED ABOVE, THE
GERMANS SIMPLY DO NOT AGREE THAT A DEFINITION IS
TECHNICALLY UNNECESSARY, AND THEY ARE CONCERNED BY
WHAT THEY SEE AS THE POLITICAL IMPLICATIONS OF OUR
LAST-MINUTE REQUEST FOR CHANGE. THE STUDY THEY ARE
NOW UNDERTAKING WILL DOUBTLESS BE A TIME-CONSUMING
ONE. WE ARE NOT CERTAIN WHAT THE MFA HAS IN MIND BY
RAISING THE BERLIN QUESTION, AND AT FIRST GLANCE THE
QUESTION OF THE RELATIONSHIP OF THE FCN TREATY TO THE

QA WOULD SEEM TO BE IRRELEVANT. SO FAR AS THE EMBASSY IS AWARE, HOWEVER, THE US HAS NO CLEAR-CUT LEGAL THEORY OF ITS OWN ON WHETHER OR NOT WEST BERLINERS ARE "GERMAN NATIONALS", AND PRESUMABLY THE MFA IS CONCERNED THAT BY FAILURE TO USE THE BASIC LAW DEFINITION WE WILL BE SHEDDING FURTHER DOUBT ON THAT QUESTION AS WELL.

9. ACTION REQUESTED: (A) THAT THE DEPARTMENT OF LABOR AND THE AFL-CIO BE INFORMED ABOUT THE CHANGE IN LABOR MINISTER ARENDT'S PLANS TO VISIT WASHINGTON. (B) IN LIMITED OFFICIAL USE

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VIEW OF THE FRG'S INDICATIONS THAT IT CONSIDERS A DEFINITION OF NATIONALITY AS ABSOLUTELY NECESSARY AND THE ABOVE POLITICAL RAMIFICATIONS THE EMBASSY WOULD APPRECIATE THE DEPARTMENT'S RECONSIDERING THE ACCEPTANCE OF ARTICLE 1 PARA 2 OF THE DRAFT AGREEMENT.
HILLENBRAND

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